



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Virginia Department of Social Services
VAC Chapter Number:	22 VAC 40-705
Regulation Title:	Child Protective Services
Action Title:	Amendment
Date:	November 2, 1999

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Virginia Code § 63.1-248.3(A1) was amended by the General Assembly in 1998 to delineate four circumstances in which physicians are now required to report suspicion of child abuse or neglect in newborn infants. The amended regulations are intended to support the legislation and provide clarification to local departments of social services regarding receipt of reports, which allege that newborn infants have been exposed to a controlled substance or display symptoms of fetal alcohol syndrome.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

A statement detailing any changes, other than strictly editorial changes, made since the publication of the proposed regulation, along with citations to the appropriate sections of the regulation and a statement of the purpose of each change made.

All changes were editorial. Two require some explanation.

1) 22 VAC 40-705-40 A. 2. One of the four circumstances, required to be reported and outlined in the Code, was omitted from the regulation. So, a diagnosis of fetal alcohol syndrome has been added to this section of the regulation.

22 VAC 40-705-40 A. 2. e. Section e. and the subsections of e. seemed to cause a lot of confusion for readers regarding the circumstances in which a report made due to VA Code § 63.1-248.3(A1) can be invalidated. This language was clarified and made more concise. The intent has not changed: The law now provides a venue for health professionals to report situations in which children may be harmed due to the parent's use of controlled substances or alcohol. It is not intended to label these parents, but to allow a local department of social services to make an assessment of the child's safety and the family's service needs.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On December 8, 1999 the State Board of Social Services adopted the final regulation entitled "Child Protective Service" (22 VAC 40-705).

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

The statutory authority for promulgating this regulation is in Title 63.1 Welfare (Social Services) of the Code of Virginia. §63.1-248 et seq. places responsibility for providing protective services to children with the Department of Social Services. §63.1-25 places authority with the Board of Social Services to make regulations “to carry out the true purpose and intent of this title.” These regulations are necessitated by 1998 legislation.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

22 VAC 40-705-10 et seq. amendments were required to define and clarify the parameters of new child abuse and neglect reporting laws passed by the 1998 General Assembly. Affected Code changes include §63.1-248.3(A1), §63.1-248.6.E.1. And E.2. The new statutes amended the reporting laws to include allegations of neglect in certain circumstances of newborn infants. The regulatory actions will provide better understanding of the new reporting laws and ultimately enhance protection of infants.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

Amendments to the existing regulations focus on defining the parameters of the 1998 legislation and clarifying ambiguities. Amendments occur only in 22 VAC 40-705-10 and 40. In 22 VAC 40-705-10 the Department defines: “certified substance abuse counselor,” “controlled substance,” “licensed substance abuse treatment practitioner”, and “substance abuse counseling or treatment services”. Changes to the reporting requirements in 22 VAC 40-705-40 include:

? A report or complaint made pursuant to §63.1-248.3 (A1) is considered a valid report of abuse or neglect requiring CPS investigation, unless the mother sought treatment prior to the child’s birth.

? Facts establishing that the infant was exposed to controlled substances prior to both or is now diagnosed with fetal alcohol syndrome are not sufficient to render a founded disposition of abuse or neglect. The local department must establish by a preponderance of the evidence that the infant was abused or neglected according to the statutory and regulatory definitions of abuse/neglect.

? If the mother did seek or receive substance abuse counseling or treatment, but there is evidence, other than the exposure to a controlled substance or alcohol, that the child may be abused or neglected, then the department is mandated to continue the investigation.

? A certified substance abuse counselor or a licensed substance abuse practitioner must provide substance abuse counseling or treatment.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Virginia Code §63.1-248.3(A1) expands the mandated reporter requirements to include reporting newborn infants who may have been exposed to controlled substances or who are diagnosed with fetal alcohol syndrome. Such an expansion will increase the number of complaints made to local child protective services agencies. However, an investigation initiated will not necessarily result in a founded disposition. The new statutory provisions and the proposed regulations do not amend the definitions of abuse and neglect. Therefore, the local department will need to establish by a preponderance of the evidence that the child was abused or neglected as currently defined in 22 VAC 40-705-10 et seq. In fact, if the mother can show within 14 days of the report that she sought and/or received substance abuse services prior to the birth of the infant, the report may be invalidated, meaning no investigation is initiated.

These amended regulations strengthen the Department's ability to protect infants at risk of being abuse or neglected. By providing authority for CPS intervention on behalf of a newborn infant, including the ability to petition the court, local departments can take a proactive approach to protecting infants who may have been exposed to controlled substances or who are diagnosed with fetal alcohol syndrome.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

A summary of public comments received, along with any agency comments.

1. Several comments of a general nature were received in support of the regulations. One stated, "My hope is that it would (also) facilitate a prevention movement so that we might lessen the number of drug-affected children that are born." Another stated that the changes in reporting requirements should facilitate reporting in these difficult cases.

2. A local director, on behalf of his Board, responded that the analysis of fiscal and other impacts was flawed, and he requested that it be amended. This request was not met.

3. One respondent asked that “immediately” be defined in section 22 VAC 40-705-40 A.2.c. The Department did not comply because this term is not defined in other sections of the Code or in regulation.

4. Several respondents commented on the confusing wording regarding fourteen days in which to determine the report valid or invalid. (22 VAC 40-705-40 A.2.e. (1), (2), and (3))

The Department has attempted to rewrite those clauses so that they are more concise and clearer in meaning.

5. One respondent provided a comprehensive review and pointed out a number of errors in wording or other matters, which were appreciated and almost unanimously acted upon. The Department generally agreed that the proposed changes in wording were needed. However, the request for clarification regarding what evidence or information from the mother will be acceptable (A.2.e) has not been added, because the Department could not name all the possible types of information the local agency might find acceptable.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Amendments to the existing regulation focus upon clarifying ambiguities and defining the parameters of the legislation enacted during the 1998 General Assembly session. Amendments occur only in 22 VAC 40-705-10 and 22 VAC 40-705-40. 22 VAC 40-705-10 is the definition section of the regulation. In 22 VAC 40-705-10, the Department defines: "certified substance abuse counselor;" "controlled substance;" "licensed substance abuse treatment practitioner;" and "substance abuse counseling or treatment services." 22 VAC 40-705-40 is the reporting section of the regulation. Substantive changes to the reporting requirements include:

·A report or complaint made pursuant to §63.1-248.3(A1) is considered a valid report of abuse or neglect requiring a CPS investigation, unless the mother sought treatment or counseling as defined in the purposed regulation and pursuant to Virginia Code §63.1-248.6(E)(2).

·Facts establishing that the infant was exposed to controlled substances prior to birth is not sufficient to render a founded disposition of abuse or neglect. The local department must establish by a preponderance of the evidence that the infant was abused or neglected according to the statutory and regulatory definitions of abuse and neglect.

·If the mother did seek or received substance abuse counseling or treatment, but there is evidence, other than the exposure to a controlled substance, that the child may be abused or neglected, then the local department may continue the investigation.

·The substance abuse counseling or treatment services must be provided by a professional. Professional substance abuse treatment or counseling may be provided by a certified substance abuse counselor or a licensed substance abuse practitioner.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These regulations are expected to impact the institution of family and family stability in the following ways:

They have the potential to strengthen the authority and rights of parents in the education, nurturing and supervision of their children. Because it requires medical professionals to report to a local social services department when infants are identified as having been exposed to controlled substances or alcohol, the social services agency will have an opportunity and an obligation to assess whether this mother and child need services related to the substance abuse by the parent or whether there are other issues of abuse/neglect. By offering intervention while the child is an infant, the parent may be able to remedy any conditions harmful to the child. On the other hand, if the assessment reveals that the parent has already obtained help for her substance use, the agency will only provide services if requested by the parent.

The regulations support the parent of a substance exposed infant to take responsibility for herself and her child. It allows the local department of social services to take a proactive approach to protecting infants exposed to controlled substances or diagnosed with fetal alcohol syndrome, but it does not require removal of the child. Often these families need services in order to function effectively, and this regulation ensures that they have an opportunity to receive them.

The regulations are not expected to impact the marital commitment.

They have the potential to increase family income indirectly in that if a parent is abusing drugs or alcohol, her ability to work may be impacted. These regulations will increase the likelihood that she will be offered services to combat her addiction.